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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 346

LEON KAMINER,

Petitioner,

vs.

TOM C. CLARK, ATTORNEY GENERAL OF THE UNITED STATES, AND WATSON B. MILLER, COMMISSIONER OF IMMIGRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

REPLY BRIEF

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The Government, recognizing the applicability of *Perkins* v. *Elg*, 307 U. S. 325 and *U. S. ex rel. Trimler* v. *Carusi*, 166 F. (2d) 457 to the jurisdictional issue herein, distinguishes those cases on the ground that the plaintiffs therein were not detained in another district (Respondents' Brief, pp. 8-9).

1. Petitioner asserts that declaratory judgment is not dependent upon the presence of a plaintiff within the court's jurisdiction. Otherwise declaratory judgment would not be available to a nonresident plaintiff who seeks relief in a

federal court, on the basis of diversity of citizenship. Likewise declaratory relief in a civil action, as is the case herein, should not be dependent on whether or not a plaintiff is detained. If petitioner were denied admission to the United States administratively, and was not detained but paroled pending enactment of legislation or litigation in a related case, habeas corpus would be unavailable and the controversy here would be just as real for the purposes of declaratory judgment. The availability of habeas corpus is not a ground for denying declaratory judgment. Rule 57, Rules of Federal Procedure.

2. The claim is made in respondents' brief (p. 9, footnote 7) that a special statute was required to grant jurisdiction to the District of Columbia Court of citizenship questions (8 U. S. C. 903). This is completely incorrect. Such jurisdiction existed before (*Perkins* v. *Elg*, 307 U. S. 325). The statute granted the complainant the option of bringing suit in the place of his asserted domicile. Normally suit could not be brought at his domicile if it were outside the District of Columbia because of lack of jurisdiction over the Attorney General or the Secretary of State.

3. This is not an action for habeas corpus and for that reason *Ahrens* v. *Clark*, 335 U. S. 188, is inapplicable. No request was made here as in the *Ahrens* case that process issue into another district contrary to the well-defined limitations which have historically surrounded the writ of habeas corpus.

The declaratory judgment statute requires that the controversy, *i. e.*, the subject matter, be within the jurisdiction of the District Court. It does not and never has required the physical presence of the plaintiff within its territorial jurisdiction.

Petitioner invoked the aid of the District Court because he was denied a hearing. He does not seek a judicial de-

termination that he is entitled to release and admission to the United States but merely a declaration that he is entitled to a regular immigration administrative hearing. It was for this reason—because petitioner is not entitled to outright release until a hearing has been completed—that petitioner sought declaratory judgment and review under the Administrative Procedure Act rather than habeas corpus. The respondent's quotation of Prof. Borchard (Brief p. 11) indicates that prejudice by "*actual* or potential adverse claims of others" is sufficient to support declaratory relief. Although declaratory judgment action may have been intended primarily to be preventative it does not preclude curative relief.

4. The petitioner invokes the jurisdiction of the District Court under the Administrative Procedure Act, 5 U. S. C. 1009, as well as under the Declaratory Judgment Act. That such jurisdiction exists to review an immigration order of the respondents has been judicially established. *Scholnick* v. *Clark,* 81 F. Supp. 298; *U. S. ex rel. Trinler* v. *Carusi,* 166 F. (2d) 457. The respondents do not answer our contention on this issue.

We submit that the District Court had jurisdiction herein and that certiorari should be granted.

Respectfully submitted,

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